



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

**[RTID 0648-XB501]**

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Construction of the Ocean Wind 1 Wind Energy Facility offshore of New Jersey**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from Ocean Wind, LLC (Ocean Wind), a subsidiary of Orsted Wind Power North America, LLC's (Orsted), for authorization to take small numbers of marine mammals incidental to construction activities associated with the Ocean Wind 1 wind energy facility in the Bureau of Ocean Energy Management's (BOEM) Lease Area Outer Continental Shelf (OCS)-A-0498 Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf off of New Jersey over the course of 5 years beginning in 2023. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Ocean Wind's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on Ocean Wind's application and request.

**DATES:** Comments and information must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Potlock@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of Ocean Wind's application may be obtained online at: *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>*. In case of problems accessing these documents, please email the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if

the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On October 1, 2021, NMFS received an application from Ocean Wind requesting authorization for take of marine mammals incidental to construction activities related to the development of the Ocean Wind 1 Offshore Wind Farm off of New Jersey in Commercial Lease (OCS-A-0498). In response to our comments, and following extensive information exchange with NMFS, Ocean Wind submitted a revised application on February 8, 2022 that we determined was adequate and complete on February 11, 2022.

Ocean Wind requested the regulations and subsequent Letter of Authorization (LOA) be valid for five years beginning in 2023.

Ocean Wind considered the following activities associated with wind farm construction in its application: impact installation of monopiles for wind turbine generators (WTG) foundations; impact installation of monopiles or pin piles for offshore sub-station (OSS) foundations; potential detonations of unexploded ordinances UXOs; construction of temporary cofferdams at the sea-to-shore transitions, which includes vibratory installation and removal of sheet pile; site characterization surveys using a range of frequencies; fisheries monitoring; placement of scour protection; and export cable trenching, laying, and burial. Vessels will be used to transport crew, supplies, and materials to the Project area and to support pile installation. A subset of these activities (e.g., installing piles using pile driving, UXO detonation, and site characterization surveys) may result in the take, by Level A harassment and Level B harassment, of marine mammals. Therefore, Ocean Wind requests authorization to incidentally take marine mammals.

### **Specified Activities**

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Ocean Wind was awarded Commercial Lease OCS-A 0498 offshore of New Jersey and the exclusive right

to submit a construction and operations plan (COP) for activities within the lease area.

Ocean Wind, LLC has submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the Ocean Wind 1 project, a 1,100-megawatt (MW) commercial-scale offshore wind energy facility located within the northeastern portion of Lease Area OCS-A 0498 and consisting of up to 98 wind turbines, 3 offshore sub-stations, and 3 transmission cables to shore.

Ocean Wind anticipates activities potentially resulting in take of marine mammals could occur for the life of the requested regulations and LOA. This includes:

- several construction-related high-resolution site assessment geophysical surveys in all 5 years (88 days per year during Years 1, 4, and 5; 180 days per year during Years 2 and 3);
- the installation of up to 98 tapered (*i.e.*, one end has a larger diameter than the other end) WTGs (monopile foundation; 8/11-meter (m) diameter piles) by impact pile driving;
- the installation of up to 3 OSSs foundations by impact pile driving consisting of either 3 monopiles (8/11-m diameter tapered piles) or 48 pin piles (jacket; 2.44-m diameter piles) from May through December in Years 1 and 2 over the course of 56 to 116 days;
- the installation and removal of up to 7 temporary cofferdams by vibratory pile driving at the cable tie-in area in Year 1 (4 days for installation and removal per cofferdam; 28 days total); and,
- the potential detonation of up to 10 UXOs over the course of 10 days in Year 1 (1 UXO detonation per day, as necessary).

Ocean Wind has noted that these are the most accurate estimates for the durations of each planned activity, but that the schedule may shift over the Project due to weather, mechanical, or other related delays.

## **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning Ocean Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Ocean Wind, if appropriate.

Dated: March 1, 2022.

**Kimberly Damon-Randall** ,

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

[FR Doc. 2022-04661 Filed: 3/4/2022 8:45 am; Publication Date: 3/7/2022]